

POSITION STATEMENT OF ANACONDA ALUMINUM COMPANY

HB 642

APRIL 2, 1981

AT A MEETING WITH GOVERNOR SCHWINDEN ON MARCH 26, 1981, CONCERN WAS EXPRESSED THAT HB642 WOULD RESTRICT THE STATE IN PROVIDING PROTECTION TO WILDLIFE. IT WAS SUGGESTED THAT THE AMENDATORY VETO PROCEDURE SHOULD BE IMPLEMENTED TO PROVIDE THE AUTHORITY TO SET "FORAGE" FLUORIDE STANDARDS APPLICABLE TO WILDLIFE IN AMENDING HB 642 BY INSERTING A COMMA BETWEEN THE WORD "FORAGE" AND "GRASSES" IN SECTION 2 OF THE BILL.

THE FOLLOWING IS SUBMITTED AS A POSTION STATEMENT OF ANACONDA ALUMINUM COMPANY RELATING TO THE POSSIBLE AFFECTS OF SUCH AN AMENDATORY VETO.

1. HB642, HOWEVER, DOES PREVENT THE BOARD OF HEALTH FROM ESTABLISHING ADDITIONAL FLUORIDE VEGETATION STANDARDS FOR THE PROTECTION OF ANIMAL LIFE NOT COVERED IN THE CURRENT RULE-MAKING ACTIVITY.

A. TO THE EXTENT THAT WILDLIFE SPECIES SHARE THE GRAZING HABITS AND GRASS CONSUMPTION DIET WITH LIVESTOCK, SUCH SPECIES WILL HAVE THE BENEFIT OF THE PROTECTION OF THE PROPOSED 35/50 FLUORIDE IN LIVESTOCK FORAGE GRASS, HAY AND SILAGE STANDARD.

B. THE EVIDENCE IN MAAQS INDICATES THAT A STANDARD (FORAGE) SUFFICIENT TO PROTECT LIVESTOCK SHOULD PROTECT WILDLIFE. ATTACHED TO THIS STATEMENT ARE EXCERPTS FROM THE FINAL EIS RELATING TO THIS MATTER.

II. RECOGNIZING THAT THERE EXISTS VERY LITTLE DATA ON TOLERANCE LEVELS OF WILDLIFE AND THAT FUTURE RESEARCH OR STUDY COULD ESTABLISH A CASE FOR A "FORAGE" STANDARD RELATING TO SOME WILDLIFE SPECIES, THE FLUORIDE EMISSION STANDARD IS AVAILABLE AS A REGULATORY TOOL TO THE BOARD OF HEALTH.

- A. IN A WELFARE RELATED STANDARD THE ECONOMIC AND SOCIAL ISSUES CAN BE CLEARLY DEFINED AND RESOLVED IN A HEAD-TO-HEAD DISCUSSION OF WILDLIFE SPECIE PROTECTION AND FLUORIDE EMISSION CONTROLS.
- B. FRANK CROWLEY, ATTORNEY FOR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, STATED BEFORE THE SELECT LEGISLATIVE COMMITTEE ON ECONOMIC PROBLEMS THAT,
"I CAN ASSURE YOU THAT BOTH THE DEPARTMENT AND THE BOARD HAVE BEEN, AND ARE FULLY AWARE, OF THE STATE OF THE ART TECHNOLOGY NOW INSTALLED AT COLUMBIA FALLS, AND I CAN ASSURE YOU THAT NO ADDITIONAL POLLUTION CONTROL COSTS WILL BE REQUIRED AT THAT FACILITY."

III. IN THE EVENT THAT FUTURE RESEARCH OR STUDY SHOULD ESTABLISH A CASE FOR A "FORAGE" STANDARD RELATING TO SOME WILDLIFE SPECIES, THE PROPER FORUM FOR GRANTING OF THE REGULATORY AUTHORITY NECESSARY TO ESTABLISH AND IMPLEMENT SUCH A "FORAGE" STANDARD IS THE LEGISLATURE, AND NOT THE BOARD OF HEALTH.

- A. IN THE PASSAGE OF HB642, THE LEGISLATURE HAS CONSIDERED THE NEED FOR SUCH AN ADDITIONAL REGULATORY AUTHORITY AND HAS ACTED TO DENY THAT ADDITIONAL REGULATORY AUTHORITY FOR THE PRESENT.

- B. THE ARGUMENTS MADE TO THE GOVERNOR AT THIS TIME HAVE BEEN SUBJECTED TO CLEAR LEGISLATIVE SCRUTINY AND HAVE BEEN REJECTED BY CONVINCING MARGINS AS EVIDENCE BY FINAL PASSAGE IN THE HOUSE OF 71/27 AND IN THE SENATE OF 38/11.
- C. THERE IS NO REASON TO BELIEVE THAT THESE INTERESTS SEEKING REGULATORY AUTHORITY FOR A WILDLIFE "FORAGE" STANDARD HAVE HAD, OR WILL HAVE, LESS ACCESS TO THE LEGISLATURE THAN THE REGULATED INDUSTRIES.
- D. THE SCIENTIFIC KNOWLEDGE ON THE SUBJECT IS IN THE VERY PRIMARY STATES OF DEVELOPMENT AND UNTIL MORE IS KNOWN AS TO WHAT IS REQUIRED, IF ANYTHING, THE BOARD OF HEALTH SHOULD NOT BE GIVEN THE LEGISLATIVE POWER TO PROMULGATE RULES THAT WOULD REGULATE THE OPERATIONS OF THE ANACONDA ALUMINUM COMPANY PLANT, AS THOSE OPERATIONS RELATE TO VEGETATION, OTHER THAN THAT INTENT INCLUDED IN THE LIVESTOCK FORAGE STANDARD.

IV. THE AMENDATORY VETO, IN THE FORM PREPARED BY THE GOVERNOR, WOULD REQUIRE THAT THE BOARD OF HEALTH "ESTABLISH" A "FORAGE" STANDARD AS TO EVERY SPECIE OF VEGETATION THAT COULD CONCEIVABLY BE CONSUMED BY ANY SPECIE OF WILDLIFE.

- A. WE KNOW THAT IN A NUMBER OF VEGETATION SPECIES SUCH AS CONIFER NEEDLES, WILLOW, OREGON GRAPE, ETC., ACCUMULATIONS OF FLUORIDE WILL BE SUBSTANTIALLY IN EXCESS OF THE PREPARED 35/50 FORAGE STANDARD, AND ANACONDA WILL BE IN VIOLATION OF SUCH FORAGE STANDARDS FROM THE DATE OF ADOPTION.

B. UNDER THE EXISTING AMBIENT AIR QUALITY STANDARDS, SUCH "FORAGE" STANDARDS WOULD BE DIRECTLY ENFORCEABLE AGAINST THE SOURCE WITHOUT REFERENCE TO THE CURRENT FLUORIDE EMISSION STANDARDS, AND THE FINES AND PENALTIES, PLUS INJUNCTIVE RELIEF BY INDIVIDUALS AS WELL AS THE STATE, COULD BE DIRECTLY ENFORCED FROM THE DATE OF ADOPTION OF THE STANDARDS.

V. THE AMENDATORY VETO, IN THE FORM PROPOSED BY THE GOVERNOR, COULD LEAD TO THE EXTENSION OF THE REGULATORY AUTHORITY GRANTED BY THE AMENDATORY VETO ON TO PROPERTY OWNED BY ANACONDA AND FROM WHICH THE PUBLIC IS EXCLUDED.

A. THE PROTECTION OF WILDLIFE SPECIES WILL NOT BE SUSCEPTIBLE TO GEOGRAPHIC BOUNDARY LIMITATIONS, EITHER PHILOSOPHICALLY OR AS A PRACTICAL MATTER WHICH IS REQUIRED OF ALL FORAGE STANDARDS.

VI. A SAMPLING PROTOCOL WOULD BE DIFFICULT, IF NOT IMPOSSIBLE, TO DESIGN.

ANACONDA ALUMINUM COMPANY
PRIMARY REDUCTION DIVISION
COLUMBIA FALLS, MONTANA